

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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DEC - 1 1992

Federal Communications Commission
Office of the Secretary

In the Matter of

Implementation of the
Cable Television Consumer
Protection and Competition
Act of 1992

Cable Home Wiring

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MM Docket No. 92-260

COMMENTS OF
TIME WARNER ENTERTAINMENT COMPANY, L.P.

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DEC - 1 1992

Federal Communications Commission
Office of the Secretary

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SUMMARY

- The Commission should encourage flexibility by promoting consumer awareness of various options for disposition of internal cable wiring.

In this proceeding, the Commission proposes to establish rules concerning the disposition of cable home wiring following subscriber termination of services in accordance with Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992. Time Warner submits that Congressional intent can best be achieved by a flexible approach which allows numerous options for disposition of cable home wiring to develop in the marketplace, rather than a rigid approach, for example, requiring all subscribers to purchase such wiring upon termination of service. These goals can be accomplished by a regulation which requires, upon initiation of cable service and installation of internal wiring in a home by a cable operator, that all options for the disposition of such internal wiring be clearly communicated to the subscriber in writing.

- Section 16(d) does not apply to common internal wiring within multiple unit dwellings.

Section 16(d) applies solely to cable wiring installed "within the premises of [a] subscriber," thus excluding common wiring in multiple dwelling units. Improperly extending the application of rules promulgated under Section 16(d) to multiple unit dwellings would have numerous adverse consequences:

1) future competition in the multichannel video service industry would be frustrated;

2) a greater opportunity would be provided for theft of cable services;

3) existing state and local cable access laws would be undercut; and,

4) residents in many multiple unit buildings could be deprived of the ability to receive franchised cable television service.

- Section 16(d) is limited to truly "internal" wiring.

The legislative history of Section 16(d) indicates that Congress intended it to apply only to "internal wiring contained within the home." Other equipment provided by cable operators within the home, such as converter boxes and remote control units, is not "wiring" and, thus, is not subject to the statute. Similarly, the provisions of the statute are inapplicable to any wiring or other equipment located exterior to the home.

- Flexibility in disposition options should be encouraged.

"Disposition" should be applied flexibly, to promote numerous options to the cable operator and the consumer, such as sale to the homeowner, removal, or retention by the cable operator. Nothing in the express language of the statute requires a rigid interpretation of disposition, contrary to its ordinary meaning.

- Section 16(d) is inapplicable in cases of theft or termination for nonpayment.

On its face, the statutory language applies only where the subscriber terminates service, not where the cable operator terminates service, e.g., for nonpayment. Similarly, any benefits available through Section 16(d) should not accrue to a to a subscriber who has engaged in the unlawful activity of stealing cable television service.

- Section 16(d) should apply prospectively.

There is no valid policy reason why Commission rules to implement Section 16(d) should disturb any existing agreements relating to the ownership or control of internal cable wiring. Indeed, there are strong legal and public policy reasons why Section 16(d) should only apply prospectively, for example, to avoid interference with existing contractual arrangements. Moreover, retroactive regulations are disfavored and subject to strict scrutiny by the courts.

- Issues relating to the costs of maintaining internal wiring, or the price for homeowner acquisition, should be addressed in the Commission's rate proceeding.

The costs of maintenance and repair of cable home wiring cannot be overlooked, particularly given the potential harm from signal leakage emanating from improper maintenance. While cable operators should be afforded great flexibility in recovering such maintenance and repair costs, these issues are perhaps better addressed in the Commission's upcoming comprehensive rate

proceeding. Similarly, while the sale price of home internal wiring is not subject to regulation at either the federal or local levels, somewhat related issues concerning rates for installation and additional outlets should also be considered in the rate proceeding.

- In order to achieve all of the foregoing goals, the Commission should adopt the following regulation:

After the effective date of this rule, upon initiation of cable television service, the cable operator shall provide the subscriber with a written explanation of all options relating to the disposition of any internal wiring to be installed within such home by the operator. If the cable operator intends to remove such wiring after termination of service, arrangements for protecting the homeowner's property against damage shall be clearly disclosed. For the purposes of this regulation, "internal wiring" means only such cable, fiber, wire or other closed transmission media as may be installed entirely within the confines of an individual dwelling unit in order to provide service exclusively to that dwelling unit, and no other equipment whatsoever.

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COMMENTS

Time Warner Entertainment Company, L.P., ("Time Warner") hereby respectfully submits these comments in response to the above-captioned Notice of Proposed Rule Making¹ released by the Federal Communications Commission ("Commission") on November 5, 1992. Time Warner is a partnership, the majority of which is indirectly owned and fully managed by Time Warner Inc., a publicly traded Delaware corporation. Time Warner is comprised principally of three unincorporated divisions: Time Warner Cable, the second largest operator of cable television systems nationwide; Home Box Office, which operates pay television programming services; and Warner Bros., which is a major producer of theatrical motion pictures and television programs.

¹Notice of Proposed Rule Making in MM Docket 92-260, __ FCC Rcd __, adopted November 5, 1992 ("NPRM").

I. INTRODUCTION

The Commission's November 5, 1992 NPRM on cable home wiring seeks comment on cable home wiring issues and how to promulgate appropriate rules² in accordance with the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act").³ The 1992 Act directs the Commission to prescribe "rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber."⁴ Notably, Section 16(d) does not address issues relating to ownership and maintenance of internal wiring while cable service is being provided, but rather is triggered only upon voluntary termination of service by the subscriber. Moreover, nothing in the statutory language requires that home wiring be offered for sale to the subscriber, although the Commission notes this option was mentioned in the legislative history.⁵ Finally, the Commission has noted Congressional goals that seek to protect the cable operator's investment in home wiring while protecting subscribers from unnecessary charges and disruptions to their properties, as well as to guard against theft of cable service and signal leakage.⁶

²See NPRM at ¶ 2.

³Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴Id. at § 16(d), to be codified at 47 U.S.C. § 544(i) ("Section 16(d)").

⁵NPRM at ¶ 2.

⁶Id. at ¶¶ 2, 4, 6.

Rules promulgated pursuant to Section 16(d) can meet the Commission's goals and be in accordance with Congress' intent if they simply require, upon initiation of cable service and installation of internal wiring in a home by a cable operator, that all options for the disposition of such internal cable wiring upon subscriber termination of service be clearly communicated to the subscriber in writing. At the outset, it must be stressed that Section 16(d), on its face, only applies to "cable installed by the cable operator." Thus, the home wiring provision is inapplicable where the subscriber already has internal wiring in his premises, or elects to have such installation performed by a third party contractor. However, in situations where internal wiring is to be installed by the cable operator, disposition options that are clearly communicated to the subscriber at the time of initiation of service would result in consumer awareness and would help avoid future conflict over internal wiring disposition upon termination of service.

Any rules promulgated by the Commission in this rulemaking must proceed from the premise that Congress has implicitly recognized that cable wiring, at least when such wiring is provided and installed by the cable operator, is presumed to be the personal property of the cable operator unless or until the cable operator yields its ownership of such wiring.⁷ However,

⁷Typically, the ownership of internal cable wiring has been determined on a case-by-case basis, analyzing whether that wiring has become a fixture -- thus, part of the realty -- or whether it remains the personal property of the cable company. The outcomes of cases applying fixture analysis are divided -- some courts

Congress has indicated that the cable operator's presumed ownership of the internal wiring should not be construed to mean that the subscriber should not be consulted regarding the disposition of that wiring upon termination of cable service to his home.⁸

For example, the removal of internal cable wiring carries the potential of damaging the subscriber's property. Accordingly, Congress obviously intended for subscribers to be informed at the time cable service is initiated of the arrangements for disposition of the internal wiring upon termination of service. Thus, if the cable operator intends to remove the wiring, the subscriber can determine beforehand whether adequate arrangements have been specified for protection of the property. Moreover, by insuring that arrangements regarding future ownership rights are fully disclosed to the subscriber upon initiation of service, the Commission would clear

have ruled that internal cable wiring is a fixture to the realty, and some have ruled that internal wiring remains the personality of the cable company. The basis for this split is largely due to whether the cable company intended to retain ownership of its wiring or not. See, e.g., Metropolitan Cablevision, Inc. v. Cox Cable Cleveland, 1992 Ohio App. LEXIS 356 (Ohio 1992) (court determined that interior cable wiring was a fixture, thus part of the realty); T-V Transmission, Inc. v. County Bd. of Equalization of Pawnee County, 338 N.W.2d 752, 754 (Neb. 1983) (entire system, from utility pole inward, was annexed to realty and was, therefore, a fixture); Telescripps Cable Co. v. Electric Plant Bd. of City of Glasgow, Civ. No. 89-CI-269 (Barren, Ky. Cir. Ct. 1989) (court granted temporary restraining order on grounds that there was sufficient evidence to show that cable company has substantial probability of successfully establishing ownership of internal wiring at trial).

⁸See H.R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992) ("House Report").

up inconsistent results under state law, since the intent of the parties could be conclusively established. Thus, providing the subscriber with a clear, written disclosure regarding the options for disposition of the cable wiring in his home would fully carry out the intent of Congress in enacting Section 16(d).⁹ A proposed regulation to implement Section 16(d) is attached hereto as Appendix 1.

Time Warner will next address several specific additional considerations concerning cable home wiring, and how those considerations should be worked into the Commission's rules in accordance with the 1992 Act.

II. SECTION 16(d) DOES NOT APPLY TO COMMON INTERNAL WIRING WITHIN MULTIPLE UNIT DWELLINGS.

Any rules promulgated by the Commission concerning the ownership of internal home wiring should not apply to common internal wiring used to distribute signals to individual units within a multiple dwelling unit ("MDU"). Indeed, the statute on its face applies only to wiring installed "within the premises" of a subscriber. Accordingly, in the House Report, Congress expressly recognized that "[i]n the case of multiple dwelling units, this section [16(d)] is not intended to cover common wiring within the building."¹⁰ If the Commission decides to apply Section 16(d) at all in the MDU context, its applicability

⁹See House Report at 118; S. Rep. No. 92, 102d Cong., 1st Sess. 23 (1991) ("Senate Report").

¹⁰ House Report at 119.

must be strictly limited to wiring truly within the dwelling unit of the individual subscriber,¹¹ i.e., that wiring running from the wallplate in the subscriber's unit to the television receiver, and not the common wiring, which typically is installed within or along the interior and exterior walls of the building. As explained in greater detail below, care must be taken to exclude all MDU common wiring, even if physically located within an individual unit. Otherwise, the unit occupant may be able to interfere with the receipt of service by other occupants, to steal service or to precipitate signal leakage.

Construing Section 16(d) as described above is consistent with the goals of the 1992 Act concerning home wiring as set forth in the Act's legislative history.¹² It is apparent from the goals set forth by Congress that a primary concern regarding internal cable wiring was for the rights of the single family homeowner. The single family homeowner may lack the foresight, experience or technical knowledge to inquire, at the time of initiation of cable service, as to the arrangements for disposition of internal wiring upon termination of cable service. The owner of an MDU, however, is likely to be highly aware of matters relating to internal wiring, particularly since such issues often must be addressed as MDU buildings are being

¹¹ Id.

¹²These goals include, but are not limited to, minimizing the potential for theft of service (House Report at 118); promoting competition among multichannel video service providers (id.); and protecting subscribers from unwanted and unnecessary charges and disruption to their premises (Senate Report at 23).

constructed. Moreover, the MDU owner or manager typically has even more options for receipt of multichannel video programming services than the single family homeowner, given that unfranchised satellite master antenna television ("SMATV") and multichannel multipoint distribution service ("MMDS") providers often "cream-skim" by offering service, at least initially, only to higher density MDU customers.

Expanding the scope of Section 16(d) to MDU situations would also directly conflict with the intent of Congress to foster competition among multichannel video programming distributors.¹³ The Commission recognizes that consumer acquisition of internal wiring may affect future cable competition,¹⁴ and has sought comment on whether single family homeowners should be treated differently from owners of individual units in an MDU with regard to acquiring internal cable wiring.¹⁵

The distinction between single family homes and individual units in an MDU is significant in the context of future competition. A single family homeowner who acquires his internal cable wiring can use that wiring for internal distribution of signals from another available multichannel video programming service, possibly even another cable television service, to which

¹³See House Report at 118 (right of homeowners to acquire internal wiring "would enable consumers to utilize the wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause").

¹⁴See NPRM at ¶ 2 & n.6.

¹⁵Id. at ¶ 3.

he chooses to subscribe following termination of his previous cable television service. However, the resident of an individual unit in an MDU, even if he acquires the internal cable wiring within his unit, cannot necessarily receive an alternate multichannel video service of his choice, but rather is at the mercy of the building owner. If the MDU building owner controls the common wiring, residents of the individual units can be denied access to the multichannel video programming of their choice, thereby making entry by other multichannel video programming impossible within the building. Since the common wiring to which all individual units must be connected is typically used to receive only one multichannel video service provider at a time, the occupant of one unit cannot usually choose to receive MMDS service, for example, while his neighbor chooses to receive franchised cable service. The building owner (or condo or co-op board, etc.) essentially acts as a gatekeeper to a single multichannel video service in the building if it is wired with a single distribution system.

If fostering further competition in the multichannel video service industry is indeed a desired goal, it can be maximized in MDUs without allowing either building owners or individual unit owners to acquire the common internal wiring. Rather, the Commission should allow each multichannel video programming distributor operating in a particular community to retain ownership of any internal wiring installed within an MDU, even if a particular subscriber has discontinued service. Thus, separate

wiring for competing multichannel video programming distributors would be allowed to remain in place and would be available to the residents simultaneously. The distributors of all the types of available programming would then be able to compete for customers from each dwelling unit, thereby fostering competition.

Conversely, where a cable operator has installed the internal wiring in an MDU, it would be grossly unfair to require the cable operator to cede control of that wiring to a competitor and then have to reinstall another set of internal wiring in order to compete.

Extending the scope of Section 16(d) to cover all the internal wiring in an MDU could also undercut valid state and local cable access laws, thereby making it more difficult for franchised cable operators to serve the residents of MDUs. Generally, cable access laws provide that a landlord shall not interfere with the installation of franchised cable television facilities upon his premises when cable television service has been requested by a tenant, or that a landlord may not interfere in any other way with a tenant's right to receive cable television service.¹⁶

¹⁶See, e.g., N.Y. Exec. Law § 828 (McKinney 1992); Conn. Gen. Stat. § 16-333a (1990); Fla. Stat. ch. 718.1232 (1991); Kan. Stat. Ann. § 58-2553(a)(5) (1991); N.J. Rev. Stat. § 48:5A-49 (1991); Codified Ordinances of the City of North Royalton, OH, Ordinance 1981-88, Section 14 (reprinted in Cablevision of the Midwest, Inc. v. Gross, 1992 Ohio App. LEXIS 3490, *8 (Ohio Ct. App. 1992)).

For example, if the owner of an MDU received cable television service on a bulk basis for that building,¹⁷ then terminated that service and purchased all the wiring within his building, a tenant living therein who desired cable service under the authority of a cable access statute, such as the New York statute at issue in Loretto,¹⁸ may not be able to receive cable service if the building owner, who now owns the wiring, has chosen not to use that wiring to provide franchised cable service to the tenants of the building. In order for tenants to be able to receive cable television service pursuant to a valid cable access statute, the cable company would have to be permitted to install new wiring in the building so that it could serve the tenants desiring cable service on an individual subscriber basis. Even in those progressive states that do not allow landlords to interfere with a tenant's right to receive franchised cable service, the process of actually gaining access to such buildings pursuant to a cable access statute continues to present significant practical difficulties, often requiring years of

¹⁷MDU buildings are often provided with service on a "bulk" basis, i.e., at a flat rate often substantially below the per unit rate for individual single family home subscriptions. Cable service is then provided to all MDU residents, who then compensate the building owner through apartment rental payments, condo fees, etc.

¹⁸Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 423 (1982) (New York statute, cited in note 16, supra, provided, inter alia, that no landlord shall interfere with the installation of cable television facilities on his property).

costly litigation to enforce such consumers' rights.¹⁹ For example, in 1992 alone, Time Warner Cable's Southern Manhattan system initiated approximately thirty proceedings before the New York State Commission on Cable Television in which it sought access to various MDUs where such access has been denied, notwithstanding New York's cable access law.

In addition to hindering competition, individual unit ownership of internal MDU cable wiring could create a whole host of other problems, some contemplated by Congress when it enacted the 1992 Act, and some not. For example, if a unit owner were able to acquire a portion of the internal MDU wiring, and proceeded to remove that wiring, or tamper with it in some way, other residents of the building may not be able to receive cable television service at all if the building were wired on a loop-through basis.²⁰ Thus, the Commission should exercise care to

¹⁹See, e.g., Loretto, 458 U.S. 419 (case involving cable wiring installed in and on an apartment building pursuant to a cable access statute went all the way to the Supreme Court for resolution); Manhattan Cable Television, Inc. v. MHP Land Assoc., No. 1175/92 (Supreme Ct. N.Y., Complaint filed Jan. 14, 1992) (Since 1985, landlord of apartments has been thwarting efforts of Time Warner Cable affiliate to install cable television facilities at those apartments pursuant to New York cable access statute that was deemed valid by U.S. Supreme Court in Loretto. Even though the New York State Commission on Cable Television issued an order establishing cable operator's right to install cable facilities at the apartments, the Time Warner Cable affiliate has not yet been able to install such facilities because of the landlord's failure to permit access to the apartments.).

²⁰Buildings wired on a loop-through basis deliver signals to the individual units in a chain -- every unit is connected to the unit next to it. If one part of the chain is broken or removed, all subsequent units in the chain will not be able to receive cable signals.

exclude all MDU common wiring from its regulations, even if physically located within an individual unit.

Furthermore, individual unit ownership of any common internal wiring, other than non-common wiring running from the wallplate to the television receiver, may increase the potential for theft of cable service within an MDU. Congress has recognized that theft of service is a serious problem, especially in apartment buildings,²¹ but it apparently believes that the potential for theft of service will not be so great if the scope of Section 16(d) is limited to wiring installed within the "interior premises" of a subscriber's individual dwelling unit in an MDU.²² The problem of theft of cable television service should not be taken lightly. Theft of service is one of the most pervasive, popular and seldom-prosecuted white-collar crimes in the United States.²³ With over four million cable viewers pirating signals,²⁴ the United States' cable industry loses an estimated more than three billion dollars in revenue annually due

²¹House Report at 118.

²²Id.

²³See Michael Dorfsman, "Connecticut Opinion; Popular But Costly Crime," The New York Times, Nov. 18, 1984, at 11CN, p. 38, col. 1 (hereinafter "Dorfsman"); Bill Billiter, "A Clear Signal to Pirates; Cities Cracking Down on Cable TV Cheats," Los Angeles Times, Oct. 27, 1991, at B3, col. 1.

²⁴"Nielsen Figures Disagree; Piracy May Inflate Cable Penetration Figures by 4 Million or More," Communications Daily, June 1, 1992, at 1.

to theft of cable service.²⁵ Cable theft also results in significant economic losses to local franchising authorities in terms of reduced franchise fees and other taxes. The problem of cable signal piracy is not just one of economics -- it encompasses other risks as well. For example, cable pirates who use their own wiring and splice into cable wiring carrying cable signals often do not know how to splice properly, and the exposed connection may act as an antenna, causing the cable signal to leak and disrupt signals entering neighboring homes or buildings.²⁶ A leaking cable signal can also disrupt over-the-air signals, not to mention critical safety communications in aeronautical and similar bands.²⁷

In order to minimize the potential for theft of service, and to insure compliance with signal quality standards, the rules pursuant to Section 16(d) need not and should not allow MDU residents to gain access to common internal wiring, even if located within their individual dwelling units. Otherwise, a unit owner could terminate his subscription to cable service and splice into the common wiring of the building which carries the cable signals to all other subscribing units in the building. The temptation to participate in stealing cable television service should not be made so readily available by properly

²⁵See id. (the three billion dollar figure assumes that each pirate would owe about \$26.00 monthly for basic and pay service).

²⁶See Dorfsman, supra, at 11CN, p. 38, col. 1.

²⁷See discussion of cable signal leakage at part VII, infra.

limiting the scope of rules promulgated in accordance with Section 16(d). To effectuate Congressional intent, Section 16(d) must not apply to any common internal wiring used to distribute signals to individual units in an MDU. In the MDU context, Section 16(d) should apply, at most, to wiring which is exclusively internal to an individual unit, i.e., wiring running from the wallplate to the television receiver.

III. THE SCOPE OF SECTION 16(d) IS LIMITED TO TRULY "INTERNAL" WIRING.

On its face, Section 16(d) applies exclusively to wiring installed "within the premises of [a] subscriber." Similarly, the legislative history of the 1992 Act makes clear that Congress intended Section 16(d) to apply strictly to "internal wiring contained within the home,"²⁸ and not to any wiring outside the walls of the home or to any other equipment, inside or outside the home.²⁹ Thus, all cable equipment (other than "wiring") supplied by the cable operator and located inside the home, such as converter boxes and remote control units, is excluded from the scope of Section 16(d). Moreover, any external wiring or equipment, such as drop cables, grounding blocks, etc. are expressly not included within the scope of Section 16(d), even if attached to the exterior of the home. To quote the House Report:

²⁸Id. at 118; see also Senate Report at 23 ("This provision shall not apply to any wiring outside the home.").

²⁹House Report at 118.

This provision applies only to internal wiring contained within the home and does not apply to any of the cable operator's other property located inside the home (e.g., converter boxes, remote control units, etc.) or any wiring, equipment or property located outside of the home or dwelling unit.³⁰

IV. THE TERM "DISPOSITION" IN SECTION 16(d) INCLUDES NUMEROUS OPTIONS.

Section 16(d) orders the Commission to "prescribe rules concerning the disposition. . .of any cable installed by the cable operator within the premises." The plain meaning of the term "disposition" includes various ways of handling the future rights to the internal cable wiring once a subscriber has terminated cable television service. Thus, the term "disposition" cannot be read to mandate sale to the subscriber as the only available option. Indeed, Congress has indicated that it endorses a flexible approach by noting several ways to dispose of the wiring. For example, Congress apparently believes providing subscribers who terminate cable service with an opportunity to purchase the internal cable wiring is a valid option for "disposition."³¹ By referring to the numerous ways in which inside telephone wiring is handled, Congress apparently also recognized that various other arrangements to "remove,

³⁰Id.

³¹See id.; Senate Report at 23.

replace, rearrange, or maintain" are also valid methods of disposition of interior cable wiring.³²

"Disposition" should include all of the above-described options, as well as retention by the cable operator, or any other arrangement made between the subscriber and the cable operator concerning the future use of the internal wiring. The scope of Section 16(d) should not be such that it closes the door on any viable method of disposition chosen by the subscriber and cable operator regarding the future of the cable wiring inside the subscriber's premises, so long as these arrangements are clearly communicated to the subscriber upon initiation of cable television service.

In the 1980's, the Commission conducted proceedings to attempt to determine the ownership of inside telephone wiring following the breakup of AT&T. Those proceedings resulted in the Commission's 1986 detariffing order,³³ from which principles should be borrowed for purposes of this NPRM. To begin, cable wiring is logistically similar to telephone wiring.³⁴ Both kinds of wiring must enter into the premises, run through a wall or

³²Senate Report at 23.

³³See Inside Wiring Detariffing, Mem. Opinion and Order, 61 RR 2d 908 (1986).

³⁴The Commission determined that installation and maintenance of telephone inside wiring were severable from the underlying common carrier transmission services. See Inside Wiring Detariffing, 61 RR 2d 908, ¶ 16. Thus, the analysis of telephone wiring ownership should not be distinguished from cable wiring ownership on the grounds that one service is regulated as a common carrier while the other is not.

walls, and emerge somewhere inside the premises to be connected to customer premises equipment, e.g., either a telephone or a television receiver. In the case of telephone wiring, telephone companies unquestionably owned the inside wiring prior to the Commission's detariffing decisions.³⁵ The Commission ultimately decided not to force the telephone companies to abandon all ownership rights to inside wiring, but rather prohibited the telephone companies from restricting the removal, replacement, rearrangement or maintenance of inside wiring that had been installed or maintained under tariff.³⁶

The Commission should rely on these principles in the present NPRM. Any rules promulgated under Section 16(d) should, accordingly, not require cable companies to relinquish all indicia of ownership of internal cable wiring. Rather, the Commission's rules should permit a variety of options for "disposing" of a former subscriber's internal cable wiring. Like its decision regarding telephone inside wiring, the Commission's decision in this NPRM should also provide for flexibility to remove, replace, rearrange or maintain³⁷ internal cable wiring upon a subscriber's termination of cable service.

³⁵See, e.g., Inside Wiring and Maintenance (Further Notice of Proposed Rulemaking), 1985 FCC LEXIS 3572, ¶ 1 (1985) (Commission proposal that telephone companies relinquish ownership of inside wiring).

³⁶Inside Wiring Detariffing, 61 RR 2d 908, ¶ 35.

³⁷Maintenance of cable wiring is a technical consideration that will be addressed in greater detail at part VII, infra.

A straightforward reading of "disposition" will also allow adequate consideration to be given to property, contract and access rights of cable operators so that future investment in the cable industry is not discouraged.³⁸ Cable operators and subscribers need to be able to enter into mutually beneficial agreements regarding the provision of cable television service; and they need to know that such agreements will be recognized and enforced, if necessary, rather than abrogated by administrative proceedings. The consideration of these rights must not be overlooked because, without investment, the industry cannot grow, cannot be competitive and cannot provide quality programming and service for its consumers.

V. SECTION 16(d) DOES NOT APPLY IN CASES OF THEFT OR TERMINATION FOR NONPAYMENT.

Where a subscriber's service has been terminated because of nonpayment for service, the subscriber should be afforded no special rights under Section 16(d) because that subscriber has already demonstrated his irresponsibility with regard to cable service. Similarly, where a subscriber's service has been terminated because he has been caught stealing cable service, the special benefits of Section 16(d) should not apply to someone who has engaged in unlawful activity.³⁹ For these reasons, Congress has expressly recognized that "the rules and regulations

³⁸See NPRM at ¶ 2.

³⁹See 47 U.S.C. § 553.

promulgated by the Commission under this section [16(d)] should not pertain to situations where service has been terminated for nonpayment or for theft of service."⁴⁰ Indeed, the statutory language of Section 16(d) on its face applies exclusively to situations where the subscriber terminates service voluntarily, not where the cable operator terminates the subscriber's service, e.g., for nonpayment.

VI. SECTION 16(d) SHOULD APPLY PROSPECTIVELY.

The Commission has invited comment on "whether the home wiring rules would need to differentiate between existing and future cable home wiring installations."⁴¹ Any rules promulgated under Section 16(d) should differentiate between existing and future home wiring, and should apply prospectively only. Retroactive application would interfere with established contractual rights. Thus, all cable wiring in place as of the effective date of the 1992 Act should not be subject to any rules implemented regarding the disposition of home wiring. Cable wiring that is already in place was installed by cable companies who had certain investment-backed expectations as to the ownership of that wiring -- i.e. if the wiring were installed in a home in a state where courts have determined that internal wiring remains the personalty of the cable company, then the cable company installed that wiring with the expectation that it

⁴⁰House Report at 118.

⁴¹NPRM at ¶ 3.